IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 20TH MARCH 2007 / 29TH PHALGUNA 1928

Crl.MC.No. 705 of 2007()

CC.274/1999 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOLLAM

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PETITIONER: ACCUSED

BINDHU RANI, W/O SURESH BABU,
AGED 34 YEARS, KALYANI SADANAM,
MUNDACKAL, KOLLAM.

BY ADV. SRI.RAJA VIJAYARAGHAVAN
SRI.M.T.SURESHKUMAR

RESPONDENTS: STATE AND COMPLAINANT

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1. STATE OF KERALA REPRESENTED BY THE
AGP HIGH COURT OF KERALA, ERNAKULAM.

2. SOBHA, W/O RAJENDRAN,
PULINTHAZHE,PUTHEN VEEDU, MURUNTHAL,
THRIKKADAVUR VILLAGE, PERINADU P.O.

BY P.P. SRI.S.U. NAZAR.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 20/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 705 OF 2007

Dated this the 20th day of March, 2007

ORDER

The petitioner has been found guilty, convicted and sentenced in a prosecution under Sec.138 of the Negotiable Instruments Act. In revision, the sentence was modified. She was sentenced to undergo imprisonment till rising of court and to pay compensation to the complainant. According to the petitioner, she was not able to pay the amount by 16/1/07 and appear before the learned Magistrate, as directed by this Court in the order passed in the revision. The petitioner is now willing to appear before the learned Magistrate and deposit or pay the amount. According to me, the petitioner need do only the same.

2. Why has she unnecessarily come to this Court now? The decision in **Girish v. Muthoot Capital Service (P) Ltd.,** (2007 (1) KLT 16) makes it clear that the petitioner cannot be remanded to custody for default in payment, if she is prepared to make the payment. The petitioner need only appear before

the learned Magistrate. She must undergo the substantive sentence of imprisonment till rising of court. If she deposits the amount, she cannot be compelled to remain in custody, except to undergo the substantive sentence of imprisonment till rising of court. The apprehension of the petitioner that she may be remanded to custody as she did not appear before 16/1/07 and that a warrant of arrest had been issued against her later does not appear to me to be reasonable at all.

3. This Crl.M.C. is, in these circumstances, dismissed; but subject to the above specific observations.

4. Hand over a copy of this order to the learned counsel for the petitioner.

Sd/-

(R. BASANT, JUDGE)

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//true copy//

P.S. to Judge